

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Leda Properties, LTD. Dubuque, Iowa NPDES Permit No. 16299-16125 General Permit No. 2	ADMINISTRATIVE CONSENT ORDER NO. 2014-WW-15
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**TO: Ivan Fomitchev, MD
Leda Properties, LTD
2260 Samantha Drive
Dubuque IA 52002**

I. SUMMARY

This administrative consent order (order) is entered into between Leda Properties, LTD (Leda) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Leda's Storm Water National Pollution Discharge Elimination System General Permit No. 2 (NPDES permit). Leda agrees to pay an administrative penalty of \$5,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Michele Smith, Environmental Specialist
IDNR Field Office No. 1
990 W Main St. Ste. 4
Manchester, IA 52057
Phone: 563-927-2640

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-281-0824

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Leda is developing a 50 plus acre subdivision known as Cedar Crest subdivision which consists of approximately 50 lots. Ivan Fomitchhev, MD owns Leda and is the listed contact in its NPDES permit. This subdivision is on the western edge of the City of Dubuque. Lots 48-97 are located in the SW/NW 1/4 Section 12 T88N R1E and were included in NPDES Permit No. 16299-16125 which was issued on September 24, 2008.

2. On October 13, 2010, the Department received a complaint alleging that a street being developed in Cedar Crest subdivision had dirt piled up with no erosion control measures implemented. The complainant believed that the dirt would wash down into the nearby waterway.

3. On October 28, 2010, Michele Smith, an Environmental Specialist with the Department, investigated the complaint. She observed a large area of disturbed soil. It appeared that earth moving activities had been suspended thus, pursuant to Leda's NPDES permit, stabilization measures should have been initiated within 14 days after construction activities had ceased. Also, a review of records submitted by Leda to the Department showed that Leda was not conducting weekly inspections as required by its NPDES permit.

4. On January 5, 2011, a Notice of Violation (NOV) was sent for the above discussed violations. A copy of the relevant inspection report was also included with this NOV. This NOV reminded Leda that as it sold lots for development it was still responsible for implementing the pollution prevention plan (PPP) contained in its NPDES permit and that the NPDES permit is required to be followed until the entire development has reached final stabilization.

5. On November 14, 2011, the Department received a complaint alleging that water in the South Fork of Catfish Creek appeared chalky in color. The complainant believed that the source of the discoloration was the Cedar Crest subdivision.

6. On November 22, 2011, the Department conducted a complaint investigation. Once on site the Department noted that it appeared as though construction activities had ceased for the season and the required stabilization measures had not been taken.

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Further, Leda stated that written records of weekly inspections were not being maintained and that erosion and sediment control measures were not being inspected weekly, as required by Leda's NPDES permit. During the investigation, Ms. Smith requested a copy of the PPP, such a copy was not available. Ms. Smith also observed a breached dam in what appeared to be a sediment control basin. It appeared that the basin could still function as a storm water detention pond, but further collapse of the dam would render it useless. Because the PPP was not available for inspection, Ms. Smith was unable to confirm whether this retention basin was part of the PPP.

7. On December 6, 2011, a NOV was sent for the above discussed violations. A copy of the relevant inspection report was sent with the NOV.

8. On July 24, 2012, the Department received a complaint alleging that the site of the Cedar Crest Subdivision had no erosion control measures.

9. On August 1, 2012, the Department conducted a complaint investigation. While on site the Department documented the following violations: large areas of disturbed soil were observed and proper control measures had not been taken and an area of concrete waste was observed. It appeared that a cement truck had backed up to the edge of the tree line and washed out the cement directly down the slope into the trees. The breached dam that was observed during the last inspection was still breached. Following the investigation, Ms. Smith called Dr. Fomitchev who stated that weekly inspections were not being done and that there was not a PPP for the site. Dr. Fomitchev was unsure whether a PPP had ever been created for the site.

10. On August 2, 2012, a NOV documenting the above discussed violations was sent to Leda along with a copy of the relevant inspection report.

11. On August 13, 2012, the Department received a letter from Dr. Fomitchev informing the Department of the following information: (1) the basin observed by the Department does function as a storm water detention pond and does indeed need repair; (2) the basin is not part of Leda's erosion and sediment control plan and belongs to the Cedar Crest subdivision homeowners association; (3) the homeowners association is responsible for maintaining the pond and, after discussions with the association, they agreed to perform the necessary maintenance; (4) he has an agreement with the buyers of the sold lots in the subdivision and they are to be held responsible for all erosion and sediment control measures; (5) he stated that from a legal perspective he did not feel comfortable performing any actions on the sold lots; and (6) regarding the unsold lots he was working closely with Dubuque County engineers to create new storm water detention regulations.

12. On April 17, 2013, Clark Ott, an Environmental Specialist with the Department, contacted Dr. Fomitchev to discuss the measures he needed to take to ensure that contractors hired to develop properties in Cedar Crest subdivision were responsible for

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implementing the terms of the PPP. Mr. Ott stated that Leda's NPDES permit had been renewed but no change in ownership was documented. Dr. Fomitchev stated that he owned part of the subdivision but Daniel Conrad owned part of it as well. Dr. Fomitchev stated Dubuque County had given him the same advice and therefore, he was in the process of getting contractors to sign as co-permittees.

13. On May 31, 2013, the Department received a complaint that proper erosion controls were not installed at the Cedar Crest subdivision.

14. On June 13, 2013, the Department conducted a complaint investigation and documented that the silt fencing was down and/or undercut in areas. This was apparent on Lots 87-88. No erosion protection had been installed on a completed house located near the outside bend on White Oak Drive. Significant runoff was observed at the corner of White Oak and Cottingham. No controls were visible protecting the culvert.

15. On June 25, 2013, a NOV was sent to Leda for the above discussed violations. A copy of the relevant inspection report was sent along with the NOV.

16. On April 16, 2014, the Department received a complaint alleging inadequate storm water control measures had been implemented at the Cedar Crest subdivision.

17. On April 17, 2014, the Department left Dr. Fomitchev a message, requesting that he fax the Cedar Crest subdivision PPP and all the 2014 weekly inspections to the Department by April 18, 2014. On April 21, 2014, Dr. Fomitchev called the Department and stated that he was out of town and could not submit the required reports until April 25, 2014. The Department reminded him that this information is required to be available within 3 hours of the request. Dr. Fomitchev submitted the PPP and weekly inspection report to the Department later that day, on April 21, 2014.

18. On April 22, 2014, the Department conducted a complaint investigation. During this investigation the following violations were observed: no control measures were in place around a completed house located at the bend in White Oak Drive, lot 15928 Red Maple Drive, 15873 White Oak Drive and the home located between 15631 and 15547 White Oak Drive. At the home located between 15631 and 15547 White Oak Drive the following significant violations were observed: soil erosion due to lack of storm water controls and or improper maintenance of storm water controls, soil was tracked into the streets and stabilization had not be done in the areas that were no longer under active construction.

19. On April 23, 2014, a NOV was sent for the above discussed violations. A copy of the relevant inspection report was sent along with this NOV.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of National Pollutant Discharge Elimination System permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading and excavation activities.

2. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(1) adopts Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary

3. Department subrule 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. Leda has failed to comply with numerous provisions of its NPDES permit. Therefore, the above stated facts demonstrate noncompliance with this provision.

4. General Permit No.2, Part IV, provides that the permittee must develop and implement a "storm water pollution prevention plan" in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the SWPPP. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days. The above stated facts show noncompliance with these provisions.

5. General Permit No. 2, Part IV also requires that qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to

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determine compliance or any records required to be kept, within a reasonable time. The above stated facts show noncompliance with these provisions.

V. ORDER

THEREFORE, the Department orders and Leda consents to do the following:

1. Leda shall comply with all terms of its NPDES permit; and
2. Leda shall pay administrative penalty of \$5,000.00 within 30 days of the Director signing this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations and deterring this party and others from violating storm water permit requirements is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Leda was issued an NPDES permit in 2010 and since that time it has failed to comply with that permit. Leda obtained an economic benefit by avoiding the costs associated with compliance. Specifically, Leda avoided the cost of installing proper erosion controls and payment of a trained inspector to conduct weekly site inspections as required by its NPDES permit. It is estimated that Leda saved approximately \$3,000.00. For the reasons stated above that amount is assessed for this factor.

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b. **Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. NPDES permits are the backbone of the water quality program for the state of Iowa. Leda's failure to comply with the terms of its NPDES permit threatens the integrity of the program. Specifically, failure to install and maintain proper erosion and sediment controls threatens the water quality of nearby streams. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Strict attention must be paid to the requirements of NPDES permits. Therefore the amount of \$1,000.00 is assessed for this factor.

c. **Culpability.** Leda is engaged in the business of property development. This is a highly regulated activity. As a company engaged in this business it has an obligation to be aware of the applicable regulations. Furthermore, it has operated under an NPDES permit for approximately 4 years. As a holder of an NPDES permit, Leda has an obligation to be aware and fulfill the requirements associated with that permit. Thus, the amount of \$1,000.00 is assessed for this factor.

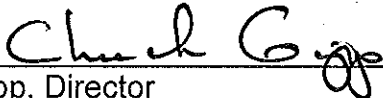
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Leda. By signature to this order, all rights to appeal this order are waived by Leda.


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VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



Chuck Gipp, Director
IOWA DEPARTMENT OF NATURAL RESOURCES Dated this 12th day of
November, 2014



Leda Properties, LTD. Dated this 3 day of
November, 2014

Leda Properties, Permit No. 16299-16125 (Copy of Order to Central Office Records File), Michele Smith- FO 1, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.